IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.7 OF 2006
IN
NOTICE OF MOTION NO.296 OF 2005
IN
WRIT PETITION NO.721 OF 2005

V.N.Jalpur — Appellant

vs.

Indian Airlines Ltd. — Respondent

Mr.Mohan Bir Singh for the appellant.

Mr.S.M.Dixit with Mr.Sudeep Dasgupta i/b.Ms.Chhaya Shah
for the respondent.

CORAM : R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED : 10th January 2006

P.C.

Heard Mr.Mohan Bir Singh, the learned counsel for the appellant and Mr.S.M.Dixit, the learned counsel for the respondent.

2. Section 17-B of the Industrial Disputes Act, 1947 provides for payment of full wages last drawn by the workman pending proceedings in higher courts in lieu of reinstatement if the workman is not gainfully employed. The appellant-workman can not be held entitled to the wages under Section 17-B while staying outside India as it may not be possible for the employer to find out whether the workman is gainfully employed or not. We,

therefore, uphold the observation of the learned Single Judge that the appellant-workman shall be entitled to wages under Section 17-B in lieu of reinstatement while staying in India on his filing an affidavit that he is not gainfully employed. However, the direction given by the learned Single Judge that the appellant-workman shall be paid a sum of Rs.3897.55 per month being the basic salary excluding the allowances needs modification as Section 17-B provides for payment of full wages last drawn by the workman.

3. In the appeal no.990/2005 arising out of notice of motion no.295/2005, the Division Bench of this Court, considering the identical issue, held that the workman shall be entitled to receive the wages under the caption "basic salary", VDA, City Compensatory Allowance, House Rent Allowance, Conveyance Allowance and Educational Allowance. The learned counsel for the respondent does not dispute that the order dated 19th December 2005 passed by the Division Bench in Appeal No.990/2005 holds the field. In view thereof, we direct that the appellant-workman shall be entitled to receive the wages as directed in paragraph 16 of the order dated 19th December 2005 in the aforereferred appeal. As already clarified, these wages shall be payable to the appellant-workman only during the time he stays in India and on his affidavit being filed that he is not

gainfully employed.

4. The impugned order dated 20th July 2005 is modified accordingly.

(R. M. LODHA, J.)

(ANOOP V. MOHTA, J.)